IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J
Writ Petition No.3097 of 2003

Shanti Menezes
504, Shishira Yamuna nagar
Andheri West Mumbai 400053 ..Petitioner

vs.

l. Air India Limited
Air India Building
Nariman Point, Mumbai. 40002l

2 J N Gogoi
Managing Director
Air India Ltd
Air India Building
Mumbai 4002l

3. A Mascarenhas
Director Inflight Services Dept
Air India Ltd Medicon Bhavan
NITC Sahar Andheri East
Mumbai. 400099

4. R M Pawar
Sr Manager Personnel
Human Resources Devp Dept
Air India Ltd Snatacruz East
Mumbai 400029 .. Respondents

Mr Mohan Bir Singh for petitioner
Mr. S K Talsania for M V Kini for respondents

CORAM: A.P.SHAH & S.C.DHARMADHIKARI JJ

dt.3.2.2004

ORAL JUDGMENT: (Per A.P.Shah J.)

Rule

l. The learned counsel appearing for the respondents waives service. By consent, rule is taken up for hearing.

2. By this petition the petitioner is seeking a writ of certiorari or any other appropriate, writ, order or direction to quash and set aside the letter dated l3/l7-l2-2002 by which the petitioner’s date of confirmation has been changed from l.7.l998 to l.7.l999. The petitioner is employed bythe respondent Air India Ltd in l983 and is presently working as Senior Check Airhostess. In l997 the Air India introduced a new promotion policy for its cabin crew. This policy envisages "time bound promotions" for cabin crew. The petitioner having completed requisite number of years of service and based on her service record was promoted as Senior Check Airhostess with effect from l.7.l997 vide letter dated 24.7.l998. By the said letter the petitioner was informed that she would be deemed to have been confirmed with effect from l.7.l998. By the impugned letter dated 9.4.2002 the date of confirmation of the petitioner was changed from l.7.l998 to l.7.l999. The petitioner was not given any show cause notice nor she was made aware of such change nor she was afforded any opportunity of representing against such change .No hearing was granted to the petitioner before the change was effected.

3. Pursuant to the notice by this court respondents appeared and contested the petition by filing a counter affidavit. It is inter alia contended by the

respondents that after the petitioner was promoted vide letter dated 24.7.l998 at a later stage it was observed that the petitioner ought not to have been confirmed with effect from July l998 as she was undergoing punishment of stoppage of increment on l.7.l998 which actually was due to her on l.7.l999. The date of promotion and the date of confirmation cannot run currently and therefore petitioner was not entitled for promotion with effect from l.7.l998 as she was facing disciplinary action. It is contended that the petitioner was chargesheeted on l2.9.l997 for indulging in the activities of instigating cabin crew members not to accept the settlement entered into between the recognised Union i.e. AICCA and the Management, thus causing hindrance in the smooth implementation of the settlement. A two member enquiry committee was constituted to enquire into the charges levelled against the petitioner and the enquiry committee found the petitioner guilty of the charges levelled against her and consequently the competent authority by its letter dated 5.3.l998 imposed punishment of stoppage of annual increment due to her on l.7.l998 and thereafter next increment was due only in July l999, subject to her work and conduct being found satisfactory during the period of punishment. According to the respondents petitioner deliberately suppressed the fact that she was awarded punishment of stoppage of annual increment due to her

in July l998. Therefore the action of the respondents in changing the petitioner's date of confirmation from l.7.l998 to l.7.l999 is well within the authority of the Corporation.

5 We have heard the learned counsel appearing for the parties.In our opinion it is not possible to sustain the impugned order whereby the date of confirmation of the petitioner has been changed from l.7.l998 to l.7.l999.In the first place the case of the respondent that the order of confirmation was issued without noticing disciplinary action against the petitioner is false and untenable. The letter of confirmation issued by the respondents itself show that the competent authority was conscious of the punishment of stoppage of increment imposed upon the petitioner. The relevant portion of the letter dt. 24.7.l998 reads thus:

> We have pleasure in informing you that you have been promoted as Additional Senior Check Air Hostess in the Inflight Service Department w.e.f. July 0l,l998, from which date your Basic Pay has been increased in the scale of pay of Rs.4975-l75-6350-200-7550 as indicated below:

Date	Existing Pay	Revised Pay	Remarks
0l.07.07	Rs 6550 pm	Rs.6750 pm	Promotion
0l.07.98	Rs.6750 pm	Rs.6750 pm	Stoppage of increment

2. Consequent upon your promotion to the post of Additional Senior Check Air Hostess, you will be paid applicable allowances w.e.f l.7.97

3. As an Additional Senior Check Air Hostess, in accordance with the Company’s Promotion Policy, you will in addition to the functions assigned to the higher post, continue to carry out the functions that were being performed in the lower post as may be required by the department.

4. You are deemed to have been confirmed as Additional Check Air Hostess with effect from l.7.l998

5. Your next date of increment is l.7.l999".

6. In the light of the above letter it is not possible to accept the case of the respondents that the date of confirmation was fixed on l.7.l998 in ignorance of the punishment imposed on the petitioner. Moreover there was total violation of principles of natural justice. The petitioner had no notice that any change in her date of confirmation was being contemplated. Admittedly no hearing was granted to the petitioner before the change was effected. Thus the petitioner had no opportunity of any kind to show cause against the impugned order. In any view of the matter the respondents were not justified in changing the date of confirmation almost 4 years after the date had already been confirmed and that too without any show cause notice or hearing. In the result petition succeeds. Rule is made absolute in terms of prayer clause (a). No order as to costs.